



UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO.
08/428,918	04/25/95	REAVER	R REAV-35008
			EXAMINER

32M1/0618

SCOTT W KELLEY
KELLY BAUERSFELD AND LOWRY
6320 CANOGA AVENUE
SUITE 1650
WOODLAND HILLS CA 91367

ROWAN, K	
ART UNIT	PAPER NUMBER

3205

10

DATE MAILED: 06/18/97

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

- ☐ Responsive to communication(s) filed on _____
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

- ☒ Claim(s) 1-19 is/are pending in the application.
- ☐ Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-19 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☒ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of Reference Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

Art Unit: 3205

1. The indicated allowability of claims 1-19 is withdrawn in view of a defective reissue declaration.

2. The reissue oath or declaration filed with this application is defective because it fails to particularly specify the errors and/or how the errors relied upon arose or occurred as required under 37 CFR 1.175(a)(5). Included are inadvertent errors in conduct, i.e., actions taken by the applicant, the attorney or others, before the original patent issued, which are alleged to be the cause of the actual errors in the patent. This includes how and when the errors in conduct arose or occurred, as well as how and when these errors were discovered. Applicant's attention is directed to *Hewlett-Packard v. Bausch & Lomb*, 11 USPQ2d 1750, 1758 (Fed. Cir. 1989).

Applicant's reissue declaration fails to 1) distinctly specify the defects in the claims [see 37 CFR 1.175 (3)]; and 2) particularly specify how and when the defects arose [see 37 CFR 1.175 (5)]. It is noted that applicant's attorney submitted declaration specifying the defects and indicating that some of them such as the "mesh limitations" arose during the original patent prosecution "due to an oversight by Mr. Reaver". It is not clear whether or not the co-inventor, who also reviewed and understood the contents of at least the original claims of the patent application was guilty of the same oversight. However, a proper supplemental declaration by the applicants specifying the defects and setting forth the factual manner in which they occurred is required for full compliance with 37 CFR 1.175.

3. Claims 1-19 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

Serial Number: 08/428918

Page 3

Art Unit: 3205

4. Any inquiry concerning this communication should be directed to Kurt Rowan at telephone number (703) 308-2321.

Kurt Rowan

Rowan/DMM

KURT ROWAN
PRIMARY EXAMINER
GROUP 0200

June 10, 1997